

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Person to Contact: [REDACTED]

Telephone Number: [REDACTED]

Refer Reply to: [REDACTED]

Date:

26 MAR 1986

Ladies and Gentlemen:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The evidence submitted shows that you are operating as an unincorporated association.

Your present primary purposes and activities are your monthly meetings and your art exhibits. You also plan to have an educational type of newsletter.

You have described your educational activities of your monthly meeting as follows: Each guest artist (who is a professional artist and sometimes also a teacher) demonstrates his/her media and style, with examples of their work, performance of their speciality, and/or lectures. These artists also, at your request, submit to a question-and-answer period so that each person attending has the opportunity to ask questions. These meetings are open to the public.

Your exhibits are both juried and nonjuried shows. Your chairman determines how many works of art will be accepted from each member. When a member sells a work, the buyer and artist deal solely with each other. You do not take a commission on any sales at your shows. You stated that you only differ from a commercial gallery in that the exhibits are for only a short time. There are art museums and art galleries in the area. You stated that you do not provide any educational material to the public at your exhibits.

Your principal source of income will be from your membership dues. Your principal expenditure will be the expense of your art shows.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of organizations that are organized and operated exclusively for educational purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations provides that an organization is not organized and operated exclusively for educational purposes unless it serves a public rather than a private interest. Thus, an organization may not be operated for the benefit of designated individuals.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term "educational" relates to the instruction of the public on subjects useful to the individual and beneficial to the community. Museums are included in the examples of educational organizations which, if they otherwise meet the requirements of section 501(c)(3) of the Code, may qualify under this section.

Section 501(c)(3) of the Code has been construed as requiring all the resources of the organization to be applied to the pursuit of one or more of the exempt purposes therein specified. The presence of a single nonexempt purpose, if substantial in nature, will preclude exemption. See Better Business Bureau v. U.S., 326 U.S. 279 (1945), Ct. D. 1650, 1945 C.B. 375.

Although an incidental private benefit will not destroy the qualifications of an otherwise educational organization, where an organization is serving both public and private interests the private benefit must be clearly incidental to the overriding public interest. A contrary finding will indicate that the organization is serving private interest. Benedict Ginsberg v. Commissioner, 46 T.C. 47 (1966).

In Cleveland Creative Arts Guild v. Commissioner, 50 TCM 272, Dec. 42, 192(M), TC Memo 1985-316, the court stated that in determining whether an organization's non-exempt activities exceed the benchmark of insubstantially set out in the regulations, the factors to be considered include: (1) the manner in which the organization's activities are conducted, (2) the commercial hue of these activities, and (3) the existence and amount of profit from these activities. This case also held that the Cleveland Creative Arts Guild was not operated for the private interests of its members.

Rev. Rul. 71-395, 1971-2 C.B. 228, holds that a cooperative art gallery formed and operated by a group of artists for the purpose of exhibiting and selling their work does not qualify under section 501(c)(3) of the Code.

The information submitted shows that you act as a catalyst for showing and selling the art work of your members. In addition, you are a vehicle for advancing the careers and promoting the sale of the art work of your members. These above activities are personal and are directed towards your members and are a substantial part of your activities. Thus, you serve the private purposes of your members, even though the exhibition and sale of paintings may be an educational activity in other respects.

You are distinguishable from the Cleveland Creative Arts Guild case in the amount of sale in your exhibits by your artist members, the commercial manner of your operations, and your selection criteria. Thus, it is our conclusion that you serve a substantial private interest of your members. You are also distinguishable from the Cleveland Creative Arts Guild case on the amount of your educational activities in comparison

to your non-exempt activities. Thus, it is our conclusion that your non-exempt activities are more than an insubstantial part of your activities.

Accordingly, it is our conclusion that you are neither organized nor operated exclusively for one or more purposes as specified in section 501(c)(3) of the Code. Therefore, you are not entitled to be recognized as exempt from federal income tax under section 501(c)(3) of the Code. You are required to file federal income tax returns and contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted in duplicate within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Internal Revenue Code, provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director in Dallas, Texas. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with Code section 6104(c).

[REDACTED]

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: [REDACTED]. These symbols do not refer to your case but rather to its location.

Sincerely yours,

[REDACTED]

Chief, Exempt Organizations  
Rulings Branch